

1 E. MARTIN ESTRADA
United States Attorney
2 SCOTT M. GARRINGER
Assistant United States Attorney
3 Chief, Criminal Division
ALEXANDER B. SCHWAB (Cal. Bar No. 283421)
4 Assistant United States Attorney
Deputy Chief, Major Frauds Section
5 1100 United States Courthouse
312 North Spring Street
6 Los Angeles, California 90012
Telephone: (213) 894-1259
7 Facsimile: (213) 894-0141
E-mail: alexander.schwab@usdoj.gov

8 Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 DAVID JOSEPH BUNEVACZ,

16 Defendant.

No. CR 22-175-DSF

GOVERNMENT'S SENTENCING POSITION;
DECLARATIONS; EXHIBITS

Hearing Date: November 21, 2022
Hearing Time: 8:30 a.m.
Location: Courtroom of the
Hon. Dale S. Fischer

17
18 Plaintiff United States of America, by and through its counsel
19 of record, the United States Attorney for the Central District of
20 California and Assistant United States Attorney Alexander Schwab,
21 hereby files its sentencing position.

22 This sentencing position is based upon the attached memorandum
23 of points and authorities, the attached declarations of Alexander B.
24 Schwab and Special Agent Ryan Asato, the accompanying exhibits (being
25 filed separately under seal), the Presentence Investigation Report
26 ("PSR"), the government's previously filed objections to the PSR, the

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1 files and records in this case, and such further evidence and
2 argument as the Court may permit.

3 Dated: November 7, 2022

Respectfully submitted,

4 E. MARTIN ESTRADA
United States Attorney

5 SCOTT M. GARRINGER
6 Assistant United States Attorney
7 Chief, Criminal Division

8 /s/
ALEXANDER B. SCHWAB
9 Assistant United States Attorney

10 Attorneys for Plaintiff
11 UNITED STATES OF AMERICA
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 For more than a decade, defendant maintained the intricate
4 illusion that he was a cannabis-industry mogul. Exploiting his
5 victims' knowledge that decriminalization had turned cannabis into a
6 booming industry, defendant used an array of shell companies, bank
7 accounts, and forgeries to raise more than \$45 million in investments
8 from victims who believed their money would be used to finance
9 successful cannabis vape pen companies. It was a scam.

10 As he continued to gaslight his suffering victims, defendant
11 dissipated tens of millions of dollars maintaining his family's
12 quasi-celebrity lifestyle. One victim writes how, as he and his
13 family "were struggling to figure out how we would pay for basic
14 necessities like a roof over our heads and putting food on the table"
15 as a result of defendant's crimes, he "could see on social media that
16 [defendant] was driving fancy cars, flying private planes, and
17 traveling the world with his family with not a care in the world."
18 (Exh. A, at 2). Defendant continued to spin his lies and defraud new
19 victims even after being placed on probation for committing state
20 securities offenses.

21 For his crimes, defendant now faces sentencing for securities
22 and wire fraud. Defendant has requested that the Court impose a
23 below-guideline sentence of 87 months' imprisonment, but, as
24 explained in further detail in this sentencing position, such a
25 sentence is insufficient to achieve the goals of sentencing. In
26 consideration of the many both the aggravating factors in this case,
27 but also and defendant's prompt acceptance of responsibility, the
28 government requests that defendant be sentenced to the low end of his

1 guideline range as calculated by the Court, which, by the
2 government's estimate, should result in a 168-month term of
3 imprisonment, a three-year period of supervised release, restitution
4 of \$35,267,851.98, and a \$200 special assessment.

5 **II. STATEMENT OF FACTS**

6 Portraying himself as someone who was "very successful in the
7 cannabis industry" and speaking "with convincing authority on the
8 changes and trends occurring around legalization" (Exh. A, at 10),
9 defendant scammed well over a hundred investors out of more than \$35
10 million in a scheme that goes back to 2010. Some of defendant's
11 victims were sophisticated investors who were snared in defendant's
12 web of convincing forgeries and false indicia of real business
13 activity. (See, e.g., id. at 6, 8). Others were friends and
14 acquaintances who trusted defendant implicitly and viewed his
15 conspicuous spending as proof of his business acumen. (See, e.g.,
16 id. at 9-12). All were taken in by defendant's lies that victims'
17 funds would be used as investments in various businesses specializing
18 in cannabis vape pen products. (PSR ¶¶ 16-18, at 5-6).

19 To win his victims' trust, defendant maintained a complex
20 network of shell companies and bank accounts, which he controlled
21 either directly or through nominees acting at his direction. (PSR
22 ¶¶ 22, 24 at 6, 7). Many mimicked the names of real businesses
23 operating in the cannabis space, such as Grenco Science and
24 SaveurVape. (Id. ¶ 23, at 6). Using these shell companies,
25 defendant generated false invoices, purchase orders, bank statements
26 -- any document necessary to keep the scam going. (Id. at 6-7). One
27 investor found online information suggesting defendant had been the
28 subject of a major lawsuit; defendant placated his concerns by

1 providing him a fraudulent version of the settlement agreement in
2 that case bearing the forged signatures of G.H. and his attorney and
3 making it appear that defendant had won the lawsuit. (PSR ¶ 21, at
4 6). In fact, it was defendant who had agreed to pay G.H. to settle
5 the case, which arose after defendant had defrauded G.H., destroying
6 the latter's business and forcing him into bankruptcy. (Exh. A, at
7 1-2).

8 In the midst of defendant's fraud scheme, he was charged in Los
9 Angeles Superior Court in 2012 with felony securities crimes. (PSR
10 ¶ 75, at 15). Nearly five years later, he was finally sentenced to
11 probation for his offenses and ordered to pay a total of \$273,000 in
12 restitution to two victims. (Id.). Defendant was also given a
13 sentence of 360 days in jail, which was permanently stayed because
14 defendant fulfilled his restitution obligation "by securing
15 additional investments from new victims . . . so that he would not
16 be subjected to a custodial sentence." (Id. at 16). During his time
17 on probation, defendant continued to defraud new investors. He also
18 failed to abide by his probationary conditions; on May 3, 2019, for
19 example, defendant "failed to appear in court in relation to a
20 possible probation violation. Probation was then revoked, and a
21 bench warrant was issued." (Id. at 15). On July 18, 2019, defendant
22 "appeared before the court and admitted to a probation violation" and
23 "[p]robation was reinstated under the same terms and conditions."
24 (Id.). Defendant concealed his criminal prosecution and conviction
25 from investors.

26 Throughout the scheme, defendant used his victims' money to
27 finance his opulent lifestyle and that of his family. For example,
28 defendant withdrew over \$8 million at casinos, with gambling losses

of an estimated \$3,755,050 at the Wynn between just January 2018 and June 2019. (Compl. ¶ 33(a)(i), at 23-24). He spent close to a million dollars on jewelry. (Id. ¶ 33(b), at 24). He used more than \$1.3 million on horses and related expenses. (Compl. ¶ 33(c), at 24). He dropped over \$200,000 on an event planner for a lavish sweet sixteen birthday party for his daughter. (Id. ¶ 33(d), at 25). And well over ten million dollars went to paying off various credit card bills. (Id. ¶ 33(h), at 25).

All in all, defendant raised \$45,227,266.98 from investors and caused his victims net losses of \$35,267,851.98. (Asato Decl. ¶ 13, at 5).

III. SENTENCING GUIDELINES

The government submits that the following sentencing guidelines apply, which are consistent with the PSR's calculation except as otherwise noted in the government's previously filed objections (CR 37):

Base Offense Level	7	USSG § 2B1.1(a)(1)
Loss > \$25 million	+22	USSG § 2B1.1(b)(1)(L)
Substantial Financial Hardship to 5 or More Victims	+4	USSG § 2B1.1(b)(2)(B)
Sophisticated Means	+2	USSG § 2B1.1(b)(10)(C)
Obstruction of Justice	+2	USSG § 3C1.1
Acceptance of Responsibility	-3	USSG § 3E1.1
TOTAL OFFENSE LEVEL:	34	

Without any departure to defendant's criminal history, his guideline range is 151 to 188 months' imprisonment. However, if, as the government argues for in its objections to the PSR, the Court applies

1 an upward departure in defendant's criminal history to Category II,
2 the result is a guideline range of **168 to 210 months' imprisonment.**

3 **A. Substantial Financial Hardship to Five or More Victims**

4 Defendant challenges the PSR's application of a four-level
5 adjustment to his offense level based on the offense resulting in
6 substantial financial hardship to five or more victims under USSG
7 § 2B1.1(b) (2) (B) .

8 The PSR sets forth a convincing basis for applying the
9 enhancement:

10 In the present case, the government has provided
11 information detailing the loss that some of the victims
12 suffered as a result of Bunevacz's actions. Specifically,
13 G.H. was forced to file for bankruptcy, had no money left
14 in their savings, and lost their home; C.C. lost a majority
15 of their savings and their plans of retirement were
16 deferred; I.H.¹ lost \$800,000, which constituted a majority
17 of their savings that they had saved over the last 10
18 years; J.H. lost \$300,000 that they intended to use for
19 retirement and had to change their lifestyle in hopes of
20 still being able to retire on time; A.C. lost money that
21 they intended to use for retirement and is now in a
22 position where they are now planning to defer their
23 retirement; and other named victims loss substantial
24 amounts of money that impacted their financial position and
25 future plans.

26 The victim impact letter of C.W. also details how his father's co-
27 investment in defendant's scam has forced him to put off his
28 retirement (Exh. A, at 8) -- one of the examples the Sentencing
Guidelines specifically references as constituting substantial
financial hardship. USSG § 2B1.1, comment. (n.4(F)(iv)).

In any event, while the number of identified victims suffering
such hardship demonstrates the adjustment applies, all that is
necessary is a "reasonable estimate" where it is "sufficient for the

¹ This appears to be a typographical error in reference to
victim I.C. (PSR ¶ 19, at 6).

1 government to produce evidence for enough of the [victims] to allow
2 the sentencing court reasonably to infer a pattern.” United States
3 v. George, 949 F.3d 1181, 1186 (9th Cir. 2020) (internal quotation
4 marks omitted). Given that more than a hundred victims suffered at
5 defendant’s hands, see generally Exh. B, the Court has ample basis to
6 conclude, as the Probation Office did, that defendant caused
7 substantial financial hardship to at least five of his victims.

8 **IV. ARGUMENT**

9 Defendant requests that the Court impose an 87-month sentence --
10 a substantial downward variance from 168 months, which is the low end
11 as the government calculates it. The government continues to believe
12 that the low end of defendant’s guideline range strikes the
13 appropriate balance between aggravating and mitigating factors in
14 this case. But, as explained below in further detail, a sentence
15 below defendant’s guideline range is inadequate to achieve the goals
16 of sentencing set forth in 18 U.S.C. § 3553(a).

17 **A. While a Guideline Sentence Is Necessary To Satisfy the** 18 **Statutory Sentencing Goals, a Low-End Sentence Is** **Sufficient To Achieve Those Goals**

19 Section 3553(a) prescribes that a sentence must be “sufficient,
20 but not greater than necessary, to comply with the purposes” of
21 sentencing. As explained above, a sentence below defendant’s
22 guideline range would fail to comply with those purposes. But given
23 the significant guideline range defendant faces, coupled with his
24 swift acceptance of responsibility, a sentence at the low end of that
25 range is appropriate.

26 Defendant was arrested on April 5, 2022, with his current
27 counsel appointed to represent him at the beginning of June.
28 Defendant entered his plea agreement on July 1. For a case of this

1 temporal scope, complexity, and seriousness, defendant's acceptance
2 of responsibility was unusually quick, reducing the burden on the
3 Court, the government, and defendant's victims. While the nature of
4 a defendant's acceptance of responsibility is prohibited as a basis
5 for a downward departure, USSG § 5K2.0(d)(2), it does inform where,
6 within defendant's guideline range, he should be sentenced. That is
7 particularly the case here where even a low-end sentence involves a
8 substantial term of imprisonment. And, as defendant correctly notes,
9 the aggravating factors of defendant's offense conduct are already
10 reflected in defendant's offense level. (CR 38, at 10). The Court
11 should therefore sentence defendant to the low end of his guideline
12 range.

13 In arguing for a below-guideline sentence, defendant also
14 contends that he would face the same guideline range even if the loss
15 amount in the case were substantially higher. While the government
16 disagrees that this is a basis for a below-guideline sentence, it
17 provides yet further support for sentencing defendant at the low end
18 of his applicable range.

19 **B. A Low-End Term of Imprisonment Is Necessary To Account for**
20 **the Egregiousness of Defendant's Crimes and To Justly**
Punish Him

21 In some respects, the Sentencing Guidelines aptly quantify the
22 massive scale of the damage defendant wrought: more than \$35 million
23 in losses to well over a hundred investors, with many suffering
24 serious financial hardship, like the loss of savings or delays to
25 retirement. Yet the seriousness of defendant's offense cannot be
26 captured in mere dollars and cents.

27 Defendant, in requesting a below-guideline sentence, argues in
28 his sentencing position that the guideline range he faces resembles

1 one typically reserved for violent criminals. That comparison is an
2 apt one; the wounds defendant has inflicted are every bit as real.
3 As the victim impact statements demonstrate, the sense of violation,
4 the assault on personal dignity, and the lasting trauma defendant has
5 caused are very much reminiscent of the harm typically associated
6 with violent crimes. And, with well over a hundred victims,
7 defendant caused these harms at a scale rarely seen:

8 1. **G.H.** Victim G.H. describes how defendant "used his charm
9 to earn my trust and lured me into a web of lies and forged documents
10 that caused me to lose a very successful business that I had built
11 from the ground up over the course of 10 years." (Exh. A, at 1).
12 G.H. goes on to explain how defendant's fraud "cost me my business,
13 my income, my customers, my friends, and almost, my family," and how
14 defendant's "insatiable greed" led to "foreclosure on our home,"
15 spending "our entire life savings fighting him in court," and,
16 ultimately, being "forced to file for bankruptcy. For years
17 afterward, I struggled personally to find myself and to trust myself
18 again." (Id. at 2). G.H. also notes that he "got a chance to see
19 Bunevacz face-to-face a few times during our legal battle. He had no
20 remorse for anything he caused." (Id.).

21 2. **G.B.** Victim G.B. explains how defendant, in addition to
22 the direct financial losses he caused him, "totally ruined my
23 business network" and "professional credibility." (Exh. A, at 4).
24 More importantly, he describes how defendant "dramatically ruined my
25 health, though he consciously knew I was recovering from a metastatic
26 cancer which hit me 5 years before I met him." (Id.). As G.B.
27 explains, defendant "told me numerous times I was a brother to him
28 and he would never forget what I was doing for him," with G.B. now

1 finding that he is "absolutely disgusted by [defendant] -- the worst
2 human being I've ever crossed!" (Id.). G.B. is now facing a relapse
3 in his cancer which he worries may prove fatal.

4 3. **S.S.** In his letter, Victim S.S. explains how defendant's
5 "deliberate, large scale" fraud resulted in losses of \$3.5 million to
6 his investment firm and another \$1 million he provided personally
7 after taking out a \$1 million loan based on his home's line of
8 credit. (Exh. A, at 5). S.S., a sophisticated investor, was taken
9 in by defendant's lies, including "purported audited financial
10 statements," "a legal opinion from their company lawyer," and
11 "purchase order details with a vape pen distributor." (Id.). S.S.
12 describes the "considerable stress on my marriage caused by me
13 recommending to my wife that we make this loan to David Bunevacz" and
14 the "significant reputational harm" that has limited his company's
15 ability to raise funding. (Id. at 6-7).

16 4. **C.W.** Victim C.W., who invested alongside his parents and a
17 family friend, describes defendant's fraud as "highly elaborate and
18 particularly evil." (Exh. A, at 8). C.W. notes that defendant's
19 crime has especially harmed his father, who "came to this country
20 with \$50 in his pocket," by forcing him "to push off his retirement
21 as an anesthesiologist in order to recoup the savings he lost."
22 (Id.).

23 5. **I.C.** Victim I.C. remarks of defendant that "[i]t still
24 shocks me whenever I recall how easily he would lie to me to convince
25 me to give him my life savings." (Exh. A, at 9). He notes that he
26 has "aged prematurely many years from this ordeal" and "will need to
27 work longer and harder for the rest of my life to partially repair
28 the financial ruin." (Id.). I.C. is "not interested in an apology"

1 because he believes defendant "is not remorseful and would continue
2 to do what he did if he was free." (Id.).

3 6. **W.S. & L.S.** Victims W.S. and L.S. invested in defendant's
4 scam after meeting him through their daughters' involvement in the
5 equestrian world. They quickly noted defendant's flashy lifestyle,
6 including "the house they rented from Kylie Jenner and [defendant's
7 wife's] 50th birthday party at Nobu. Their ostentatious wealth -- he
8 drove a Lamborghini Urus SUV and Jessica drove a Bentley -- seemed
9 mysterious but went unquestioned." (Exh. A, at 10). Now that
10 defendant has revealed his true self to them, W.S. and L.S. caution
11 that he "has a deep malevolent power of persuasion that he will use
12 to try to wriggle out of any responsibility. Once he's 'out' he will
13 return to what he knows best, stealing money from friends. Please do
14 not fall for his manipulations." (Exh. A, at 12).

15 To be sure, a low-end sentence in this case constitutes a
16 substantial term of imprisonment, such that a higher sentence would
17 be "greater than necessary[] to comply with the purposes" of
18 sentencing. 18 U.S.C. § 3553(a). But neither is defendant an
19 appropriate candidate for a below-guideline sentence. Defendant did
20 not concoct his scheme to keep a foundering business afloat or deal
21 with an unforeseen expense like a family member's medical bills.
22 Rather, he casually frittered away his victims' money propping up his
23 opulent lifestyle and that of his family, which also assisted him in
24 constructing the persona of a successful businessman whom future
25 victims could trust. Defendant spent millions of dollars of other
26 people's money on his gambling habit, his expensive jewelry and
27 handbag purchases, and even his horses. Even as much of the world
28 was quarantining at home amidst a global pandemic, defendant was

1 giving interviews describing the privileged existence he and his
2 family led with his victims' money living in their Calabasas mansion,
3 which he rented for \$18,000 per month (PSR ¶ 102, at 20): "We wake up
4 late We all workout. We are blessed to have a gym at home"
5 and "we end our day watching TV as a family, all of us will be at the
6 family room or [home] theater while eating popcorn." (PSR ¶ 69, at
7 12-13).

8 **C. The Massive Profits Defendant Reaped and His Criminal**
9 **Behavior While on Probation Demonstrate the Need for a**
10 **Guideline Sentence to Afford Adequate Deterrence and**
11 **Protect Society from Defendant**

12 The scale, length, and sophistication of defendant's scheme
13 warrant a guideline sentence to provide just punishment. But they
14 also demonstrate the need for a sentence sufficient to protect the
15 public from defendant's further crimes and afford adequate
16 deterrence. See 18 U.S.C. § 3553(a) (2) (B), (C).

17 As the victim impact statement of G.H. reveals, defendant has
18 been living a life of fraud for more than a decade. His crime is no
19 aberration or series of mistakes borne of circumstances, but rather
20 an insight into his selfishness and willingness to hurt others to
21 make a buck. The risk of recidivism is all the greater where, as
22 here, we have insight into how defendant has responded in the past
23 when made to answer for his crimes: after pleading guilty to state
24 securities offenses, defendant bamboozled the sentencing court into
25 suspending his time in jail to afford him the opportunity to make
26 restitution; defendant paid that restitution by defrauding additional
27 victims; he continued to operate his multimillion-dollar investment
28 scam while serving probation; and he even avoided punishment after
violating the terms of his probation. (PSR ¶ 75, at 15-16). Less

1 than two weeks after being sentenced in state court, defendant even
2 spent \$14,215 Rolex submariner watch on March 28, 2017. (Id.
3 ¶ 33(b), at 24). Given this history, only a guideline sentence of
4 imprisonment will protect the public and provide the direct
5 deterrence necessary to dissuade defendant from continuing to offend.

6 More generally, defendant's scheme, which caused his victims
7 losses of more than \$35 million, requires a guideline sentence to
8 deter others who might believe such a staggering sum of money would
9 be worth the chance of being caught. Economic crimes like
10 defendant's are quintessentially deterrable so long as they are met
11 with significant term of imprisonment. "Because economic and fraud-
12 based crimes are 'more rational, cool, and calculated than sudden
13 crimes of passion or opportunity,' these crimes are 'prime
14 candidate[s] for general deterrence.'" United States v. Martin, 455
15 F.3d 1227, 1240 (11th Cir. 2006) (quoting Stephanos Bibas, White-
16 Collar Plea Bargaining and Sentencing After Booker, 47 Wm. & Mary L.
17 Rev. 721, 724 (2005)). In fact, Congress, in drafting § 3553,
18 confirmed that this common-sense principle was one of the driving
19 forces for including deterrence among the goals of sentencing. See
20 S. Rep. No. 98-255, at 76 (1983), reprinted in 1984 U.S.C.C.A.N.
21 3182, 3259 ("To deter others from committing the offense . . . is
22 particularly important in the area of white collar crime.").
23 Congress was, in fact, expressly concerned with the fact that
24 "[m]ajor white collar criminals often are sentenced to . . . little

1 or no imprisonment," which the offenders disregard as "a cost of
2 doing business." Id.²

3 The sad reality is that, even with a guarantee of eventual
4 apprehension, many individuals would gladly accept the prospect of a
5 few years in prison in exchange for the life of luxury defendant and
6 his family enjoyed for the past decade. And, of course, there is no
7 guarantee of apprehension at all, particularly in the case of complex
8 fraud schemes like this one, which involved shell companies, myriad
9 bank accounts, convincing forgeries, and the ability to plausibly
10 claim to investors that what was, in truth, a massive scam was merely
11 a business deal gone wrong. To afford adequate deterrence, the
12 sentence in this case must account both for the profitability of
13 large-scale investment fraud schemes and the difficulty in uncovering
14 and prosecuting them. In this case, defendant's sentencing
15 guidelines appropriately measure these interests, and a low-end
16 sentence of 168 months would take adequate consideration of the need
17 for general deterrence.

20 ² Defendant argues that the Sentencing Guidelines for fraud
21 offenses should be given less credence because they are not the
22 product of empirical analysis of the types of sentences federal
23 judges had imposed. This is true, but only because of Congress's
24 conclusion that white-collar criminals had been systemically under-
25 sentenced vis-à-vis other offenders. Whereas most federal fraud
26 defendants received probationary sentences before the Sentencing
27 Guidelines were instituted, "the sentencing-reform movement focused
28 on meting out equal sentences for equally bad crimes." Bibas, supra,
at 723. Reformists specifically feared that these previously light
sentences for fraud defendants "indulg[ed] unconscious racial and
class stereotypes by going easy on defendants who remind judges of
themselves or with whom judges can identify." Id. at 724. Rather
than departing from some platonic ideal of the optimal sentence,
Congress's directives to the Sentencing Commission to stiffen
penalties for white-collar crimes reflect that body's conclusion that
fraud defendants merited tougher sentences than many had received.

1 **V. RESTITUTION AND VICTIMS**

2 The government submits that the appropriate restitution figure
3 in this case is **\$35,267,851.98**. Exhibit B to this sentencing
4 position, which the government files under seal to protect the
5 privacy interests of the victims, sets forth the individualized
6 breakdown by victim, with the declaration of Special Agent Ryan Asato
7 providing the basis for those calculations.

8 Based on information previously available to the government at
9 the time of defendant's guilty pleas, the Probation Office calculates
10 \$35,222,932 in actual losses. (PSR ¶ 32, at 8). To his credit,
11 defendant does not appear to contest this restitution figure, which
12 provides an additional basis for sentencing him at the low end of his
13 applicable guideline range.

14 Exhibit A to this sentencing position, which the government is
15 filing separately under seal, comprises the victim impact letters it
16 has received to date. To the extent additional victims submit
17 letters, the government will file those with the Court as well. At
18 least one victim has indicated a desire to address the Court in
19 person at the time of sentencing.

20 **VI. CONCLUSION**

21 For the foregoing reasons, the government respectfully requests
22 that this Court reject defendant's request for a downward variance
23 and sentence him to the low end of his guideline range (which the
24 government currently believes to be 168 months' imprisonment), a
25 three-year period of supervised release, restitution of
26 \$35,267,851.98, and a \$200 special assessment. Should the Court
27 determine at sentencing that a different guideline range applies, the
28 government will modify its recommendation accordingly.